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Wendy Bluemling  
Director - Regulatory Affairs

September 21, 1998

Ms. Magalie Roman Salas, Secretary  
Federal Communications Commission  
Room 222  
1919 M Street, N.W.  
Washington, D.C. 20554

RECEIVED

SEP 21 1998

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Re: Docket No. 96-150 / ASD File No. 98-72  
Motion to Accept Late Filing

Dear Ms. Salas:

The Southern New England Telephone Company ("SNET") respectfully seeks an extension of time to file its Reply Comments to the Opposition to Petition For Waiver filed by Cablevision Lightpath, Inc. ("Cablevision"). SNET requests that its Reply be accepted by the Federal Communications Commission ("Commission") on September 21, 1998.

SNET has good cause to seek this delay of one working day. Because SNET does not have its own office in Washington, SNET contracts with Bellcore to hand-deliver its filings to the Commission. As it usually does, SNET mailed its Reply to Bellcore via Federal Express overnight delivery on Thursday, September 17 in order for Bellcore to hand-deliver the document to the Commission for filing on September 18. Bellcore received the Reply on the morning of September 18 but neglected to file it on that day. Bellcore advised SNET of its error at approximately 6:45 p.m. on September 18, after the Commission's offices had closed.

Due to this oversight, SNET respectfully requests that the Commission accept its Reply in this proceeding one day after the filing deadline. SNET does not believe that grant of this extension of time will harm Cablevision in any way. As mentioned above, SNET planned to file its Reply on September 18 and, in fact, took all the necessary steps to ensure that its Reply was at Bellcore's Washington office on that day, ready to be

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filed. However, due to circumstances beyond SNET's control the filing was not made on September 18. Thus, one business day later, SNET respectfully requests that the Commission accept its Reply.

Pursuant to 47 C.F.R. §1.46(c), SNET has duly served and notified all other parties to this proceeding, as well as Commission staff personnel responsible for acting on this motion.

Respectfully submitted,

*Wendy Bluemling*  
/s/

Copy: Anthony Dale, Accounting Safeguards Division  
Gil M. Strobel, Counsel for Cablevision Lightpath, Inc.  
Jonathan W. Royston, SBC Communications, Inc.  
Stephen L. Earnest, BellSouth Corporation

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of:	)	
	)	
Implementation of the	)	Docket No. 96-150
Telecommunications Act of 1996:	)	
	)	ASD File No. 98-72
Accounting Safeguards Under the	)	
Telecommunications Act of 1996	)	

REPLY COMMENTS OF  
THE SOUTHERN NEW ENGLAND TELEPHONE COMPANY

The Southern New England Telephone Company ("SNET") respectfully submits its response to the comments of Cablevision Lightpath, Inc. ("Cablevision") with respect to SNET's Petition for Expedited Limited Waiver<sup>1</sup> from the valuation of services requirement of the Report and Order in this proceeding.<sup>2</sup> On September 3, 1997, SNET filed an *ex parte* letter informing the Commission that, due to the Connecticut Department of Public Utility Control's ("DPUC") decision<sup>3</sup> approving SNET's new corporate structure, SNET would avail itself of the exception to the market valuation requirement provided in paragraph 148 of the Commission's Report and Order. However, because SNET began operating in a dual retail mode with its Competitive

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<sup>1</sup> Petition of The Southern New England Telephone Company for Expedited Limited Waiver, CC Docket No. 96-150 (filed June 16, 1998) ("Petition").

<sup>2</sup> In the Matter of Implementation of the Telecommunications Act of 1996: Accounting Safeguards Under the Telecommunications Act of 1996, CC Docket No. 96-150, Report and Order, released December 24, 1996 (Report and Order).

<sup>3</sup> Docket No. 94-10-05, DPUC Investigation of SNET Affiliate Matters Associated with the Implementation of Public Act 94-83 (released June 25, 1997).

Local Exchange Carrier ("CLEC") affiliate, SNET America, Inc. ("SAI") in January of 1998, SNET requested that the Commission grant SNET a waiver from the valuation of services requirement during the limited period in which both SNET and SAI would be providing retail services.<sup>4</sup> Once SAI becomes a fully operational CLEC, SNET will no longer provide these services (i.e., billing, marketing, sales, customer service) to SAI.<sup>5</sup>

On September 3, 1998, SBC Communications, Inc. and BellSouth Communications, Inc. filed comments in support of SNET's Petition. Cablevision filed comments opposing SNET's Petition. These Reply Comments rebut the allegations put forth by Cablevision in their comments.

Specifically, these Reply Comments demonstrate that SNET's request for a limited waiver is being sought only for a limited period of time, is fully justified and will serve the public interest. First, the waiver requested by SNET is limited in duration and only applies for services provided by SNET to SAI until SAI becomes fully operational. Second, SNET would be unduly burdened by attempting to obtain market valuation information for purposes of valuing the services that SNET will perform on a temporary basis. Such an endeavor does not add value to SNET or to its customers. Furthermore, granting SNET's request for limited waiver comports with the goals of the

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<sup>4</sup> If this waiver is granted, these services would be priced at fully distributed cost ("FDC"). It is important to note that FDC is the most reasonable method of pricing these services. The FDC includes extensive loading in excess of market rates. Thus, SNET would be getting the full value and SAI would be assessed the full cost of these services.

<sup>5</sup> In a recent filing with the Commission, the Connecticut Department of Public Utility Control estimated that the ballot process, whereby all SNET customers will be asked to choose their local service provider, will be completed by the end of 1999. See Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, Docket No. 96-115, Petition of the Connecticut Department of Public Utility Control For Waiver of the Customer Proprietary Network Rules by the Federal Communications Commission (filed July 16, 1998) at 4.

Telecommunications Act of 1996<sup>6</sup> to reduce regulatory burdens, especially when implementing this particular regulatory requirement would provide no value to SNET or its customers and would, essentially, be wasteful.

These Reply Comments will also demonstrate that, contrary to the assertions of Cablevision, SNET's request for a limited waiver of the market valuation requirement will in no way harm Cablevision,<sup>7</sup> or any other CLEC for that matter.<sup>8</sup> Nor do SNET's transactions with SAI violate the Telecommunications Act of 1996, as Cablevision erroneously alleges in its Comments.<sup>9</sup>

Finally, contrary to the claims of Cablevision,<sup>10</sup> SNET is in no way trying to avoid its obligations under the Commission's Report and Order. SNET complies fully with the accounting safeguards set forth in that order and only seeks a limited waiver from the market valuation of services requirement. Granting this limited waiver to SNET,

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<sup>6</sup> Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (codified at 47 U.S.C. §§ 151, et seq.) (Act).

<sup>7</sup> It is interesting to note that Cablevision does not address any specific harm that would befall Cablevision if SNET's Petition were granted. Cablevision's Comments are merely the self-serving comments of a self-described competitor of SNET – a competitor that wants SNET burdened with as many regulatory impediments and costs as possible in order to affect SNET's ability to compete on equal footing.

<sup>8</sup> Also, contrary to Cablevision's baseless assertions, SNET has not employed any delaying tactics in this proceeding. SNET filed a timely Petition for Limited Reconsideration of the Commission's Report and Order on February 20, 1997. As of October 1997, the Commission had taken no action on SNET's Petition. When SNET subsequently received approval from the Connecticut Department of Public Utility Control to modify its corporate structure, SNET withdrew its Petition for Limited Reconsideration (which was no longer applicable given SNET's new corporate structure) and filed a Petition for Expedited Limited Waiver on October 31, 1997. That Petition was inadvertently filed without a filing fee. When notified of this by the Commission in June, SNET immediately re-filed the same Petition with the appropriate filing fee on June 16, 1998. Thus, Cablevision's accusation of delay tactics is completely unfounded.

<sup>9</sup> Comments of Cablevision Lightpath, Inc. Opposing The Southern New England Telephone Company's Petition for Expedited Limited Waiver, CC Docket No. 96-150 (filed Sept. 3, 1998), at 6.

<sup>10</sup> Id. at 4.

therefore, will certainly not eviscerate the accounting safeguards enacted by the Commission.

I. SNET'S REQUEST FOR A LIMITED WAIVER OF THE MARKET VALUATION REQUIREMENT IS FULLY JUSTIFIED AND WILL SERVE THE PUBLIC INTEREST.

SNET's request for a limited waiver of the market valuation requirement set forth in the Commission's Report and Order is fully justified and will serve the public interest. First, conducting a market valuation of services performed on behalf of SAI on a temporary basis would have no value to SNET or its customers. The Report and Order and Section 32.2(c) of the Commission's rules require Local Exchange Carriers ("LECs") to produce an estimate of market value for every service provided by the LEC to its affiliates. To do so, SNET would have to devote its limited resources to evaluate the extent to which comparable services are offered by vendors and, if so, at what price. Such information is not readily available in the marketplace and, in some cases, is not available at all.

Even if this information were available, obtaining estimates of fair market value for services specifically tailored to the corporate family would result in a significant non-value-added expenditure of company resources, which would ultimately be borne by customers. Conducting these analyses would be of doubtful use at best and would be limited only to a short period of time. Thus, SNET would be required to expend limited

resources in an endeavor that would have essentially no value to either SNET or its customers.<sup>11</sup>

Indeed, other LECs with first-hand knowledge of the work effort necessary to conduct fair market estimations of corporate services provided to LEC affiliates, can attest to the fact that this task is enormous. As SBC Communications, Inc. stated in its Comments in support of SNET's Petition, implementing the fair market valuation requirement entails a significant amount of work to estimate the value of each service, especially when it is being done for the first time, as is the case with SNET.<sup>12</sup> Moreover, as BellSouth Telecommunications, Inc. stated in its Comments in support of SNET's Petition, the burden of complying with this requirement has greatly exceeded any potential benefit.<sup>13</sup>

Requiring SNET to undergo a task that would provide no value to either SNET or its customers, and would cover only a limited time period, would be wasteful. Indeed, it would contradict the de-regulatory, pro-competitive goals of the Telecommunications Act of 1996. For these reasons, SNET seeks a limited waiver of the market valuation requirement set forth in the Commission's Report and Order.

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<sup>11</sup> In addition, conducting these market studies may require SNET to solicit vendors for price quotes on services the company will not be utilizing. From the perspective of the vendors, this would also be a wasteful endeavor.

<sup>12</sup> Comments of SBC Communications, Inc., at 2 (filed Sept. 3, 1998).

<sup>13</sup> Comments of BellSouth Telecommunications, Inc., at 2 (filed Sept. 3, 1998).

## II. SNET'S TRANSACTIONS WITH SAI IN NO WAY VIOLATE THE TELECOMMUNICATIONS ACT OF 1996.

Contrary to the unfounded assertions of Cablevision, SNET's transactions with SAI do not violate any provision of the Telecommunications Act of 1996. First, it is important to note that the Connecticut DPUC, in its decision approving the corporate restructure of SNET, stated that it will hold SNET accountable in future proceedings to ensure that its administrative and operational support of SAI products and services does not discriminate against other market participants.<sup>14</sup> The DPUC also stated that,

after consideration of the proposed realignment of administrative responsibilities between the Telco and SNET, the Department finds that adoption of SNET's proposal reduces the risk of cross-subsidization between regulated and nonregulated enterprises. Furthermore, the reorganization of roles and responsibilities does not constitute a threat to the development of competition. Accordingly, the Department will endorse the proposed realignment of both market and administrative responsibilities as being in the public interest and permit implementation by SNET at the earliest possible opportunity.<sup>15</sup>

To be sure, SNET is subject to sufficient oversight with respect to its provision of services to SAI to ensure that SNET does not discriminate against any other carriers in the marketplace.

In any event, the services covered by section 272(c)(1) of the Act include only telecommunications-related services and not the corporate services provided by SNET to SAI. Furthermore, these services still fall under the rubric of Part 32 of the Commission's rules and are, therefore, subject to audit on an annual basis. Finally, in its

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<sup>14</sup> Decision at 58.

<sup>15</sup> Id. at 67-68.



Report and Order, the Commission itself acknowledged the benefits realized through the economies of scale and scope that are achieved when an affiliate provides such services to the carrier's corporate family.<sup>16</sup> Grant of SNET's waiver request would allow SNET and its customers to continue to realize these benefits, while relieving SNET from conducting a burdensome task that would be wasteful and provide no value to either SNET or its customers.

III. GRANTING THIS LIMITED WAIVER TO SNET WILL NOT EVISCERATE THE ACCOUNTING SAFEGUARDS ENACTED BY THE COMMISSION.

Granting this limited waiver to SNET will not eviscerate the accounting safeguards enacted by the Commission. SNET complies fully with the accounting safeguards set forth in the Commission's Report and Order and is only seeking a limited waiver from the market valuation of services requirement. Moreover, competition and price cap regulation, in addition to the Commission's accounting safeguards, also operate as constraints on the ability of LECs' to cross-subsidize. Indeed, the Commission itself has long held that price cap regulation "substantially decrease[s] incentives to shift costs from more to less competitive service offerings" and "reduce[s], if not eliminate[s], any perverse incentive to inflate [the] rate base."<sup>17</sup> The Commission has concluded that "price caps mitigate misallocation as a regulatory concern."<sup>18</sup> As SNET is subject to price cap regulation for both state and interstate services, SNET's customers are protected from cross-subsidization of non-regulated activities. Thus, granting SNET's request for a

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<sup>16</sup> Report and Order, at para. 148.

<sup>17</sup> Policy and Rules concerning Rates for Dominant Carriers, 2<sup>nd</sup> FCC Rcd. 5208, 5213 (1987).

limited waiver of only one portion of the requirements set forth in the Commission's Report and Order will in no way erode any of the protections against cross-subsidization enacted by the Commission.

#### IV. CONCLUSION

SNET's request for a limited waiver is fully justified and will serve the public interest. SNET would be unduly burdened by attempting to obtain relevant market information for purposes of valuing every service provided by SNET for the limited period during which SNET will be providing corporate services to SAI. Moreover, such an endeavor would have virtually no value for either SNET or its customers. Furthermore, granting SNET's request for limited waiver comports with the de-regulatory, pro-competitive goals of the Telecommunications Act of 1996, and will not harm any other market participant. Thus, SNET respectfully requests that the Commission grant SNET's request for a limited waiver of the market valuation requirement set forth in its Report and Order in this proceeding.

Respectfully submitted,

THE SOUTHERN NEW ENGLAND  
TELEPHONE COMPANY

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September 18, 1998

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<sup>18</sup> Policy and Rules Concerning Rates for Dominant Carriers, 2<sup>nd</sup> FCC Rcd. 6786, 6792 (1990).